

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

DUSA PHARMACEUTICALS, INC.,  
a New Jersey corporation; and  
QUEEN'S UNIVERSITY AT  
KINGSTON, a Canadian academic  
organization,

Plaintiffs,

v.

NEW ENGLAND COMPOUNDING  
PHARMACY, INC., a Massachusetts  
corporation,

Defendant.

Civil Action No. 04-12703-NMG

**Oral Argument Requested**

**[PROPOSED] ORDER COMPELLING DEFENDANT TO PERMIT  
PLAINTIFFS TO ENTER AND INSPECT ITS FACILITY AND OPERATIONS**

The Court has considered the Plaintiffs' Motion to Compel Entry and Inspection of Defendant's Premises, the Plaintiffs' Memorandum in support of their Motion and any opposition filed by the Defendant, and any oral argument presented by the parties. It is hereby ORDERED that:

1. The Plaintiffs' Motion to Compel Entry and Inspection of Defendant's Premises ("Motion") is GRANTED.

2. Defendant shall permit Plaintiffs and their designated representatives (who may include two counsel, an expert, a photographer and a videographer) to enter and inspect Defendant's facility and operations, believed to be located at 697 Waverly Street, Framingham, Massachusetts, within seven (7) days of the entry of this Order, and continuing until such inspection is complete. The inspection may be photographed and videotaped.

2. The inspection shall include all areas of Defendant's premises, including those areas that contain relevant information or information likely to lead to the discovery of admissible evidence, and all containers and cabinets contained therein, including but not limited to the areas and activities related to the manufacture, fabrication, compounding, production, intake and/or storage of the aminolevulinic acid solution at issue in the above-captioned litigation and any components thereto. The inspection shall also include the area in which records are kept relating to the manufacture, fabrication, compounding, production, labeling, receipt, storage, packaging, handling, and/or distribution of the aminolevulinic acid solution. The inspection shall not be limited to Defendant's compounding "laboratory," and Defendant, its employees, and agents shall not interfere with or obstruct the inspection.

3. Plaintiffs shall be permitted to conduct reasonable measuring, testing and/or sampling of the areas and activities related to the manufacture, fabrication, compounding, production, labeling, receipt, storage, packaging, handling and/or distribution of the aminolevulinic acid solution or any ingredients or components thereof and records relating thereto.

4. Plaintiffs shall be entitled to recover the costs of bringing their Motion, including reasonable attorneys' fees. Plaintiffs shall submit an accounting of such costs and fees within 14 days of the date of this Order.

SO ORDERED.

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Nathaniel M. Gorton  
United States District Judge

Dated: \_\_\_\_\_, 2005